

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 105 OF 2017

DAVID RANKAI.....APPELLANT/RESPONDENT

-VERSUS-

SOUTH NYANZA SUGAR COMPANY LIMITED....RESPONDENT/APPLICANT

RULING

1. The Applicant herein, **South Nyanza Sugar Company Limited**, moved this Court by a Notice of Motion dated 27/08/2018 seeking orders of stay of execution of this Court's decree pending the hearing and determination of an intended appeal to the Court of Appeal.
2. The intended appeal arose from the judgment and decree of this Court rendered on 08/08/2018 where this Court allowed an appeal against the dismissal of the Respondent's suit before the lower court and awarded damages to the tune of Kshs. 365,300/= with costs and interest.
3. Being aggrieved by the said decision the Applicant filed a Notice of Appeal on 15/08/2018 and the instant application around two weeks later. The application is mainly premised on the grounds that the Applicant is apprehensive that chances of recovery of the decretal money are minimal, if at all any, in the event it succeeds in the appeal as the Respondent's means and material possessions are unknown to the Respondent except for the decretal sum in this case, that the Applicant shall suffer irreparable loss and is ready to provide security and abide by any order precedent thereto.
4. The application is opposed. The Respondent contended that the Applicant's apprehension has not been sufficiently demonstrated, that an order of stay of execution cannot be made without the Applicant granting any security and that this is a suitable case for ordering deposit of the decretal sums within defined timelines.
5. I have carefully considered this matter in light of the background of the suit. An appeal has already been preferred and only awaits the other processes towards determination. The overall position of the Respondent is that although he is not strictly opposing the application he decries security by depositing the sums. I tend to agree with the Respondent in the unique circumstances in this matter which call for grant of the stay order *albeit* conditionally and in line with **Order 42 Rule 6(2)** of the **Civil Procedure Rules 2010**.
6. Consequently, a stay of execution of this Court's decree hereby issues on condition that the decretal sums shall be deposited in a joint interest earning account in the names of the parties' Advocates within 45 days and in default execution to issue. Costs of the application shall be in the appeal.
7. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 12th day of March 2019.

A. C. MRIMA

JUDGE

Judgment delivered in open court and in the presence of: -

Mr. Kerario Marwa instructed by the firm of Kerario Marwa & Co. Advocates for the Appellant/Respondent.

Mr. Marvin Odero instructed by the firm of Okong'o Wandago & Company Advocates for the Respondent/Applicant.

Evelyne Nyauke – Court Assistant